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SUPREME COURT, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN J. LEWIS,

Petitioner,

v.

COUNTY OF ORANGE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FIFTH DISTRICT COURT OF APPEALS IN AND FOR THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A man's home and personal property have been seized and demolished without judicial authorization because the home was alleged to be unsafe. The question presented is whether the Fifth Amendment's Takings Clause requires just compensation be paid to the Petitioner for the taking of his home and personal property when there were no exigent circumstances which would justify the seizure and demolition of his home without judicial authorization?

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28 U.S.C. §1257 (a) 1

OPINIONS BELOW

The opinion of the Fifth District Court of Appeals in and for the State of Florida has been published. The declination of review by the Florida Supreme Court has been published. These opinions appear at Appendices A and C. These opinions are cited as *Lewis v. County of Orange*, 772 So. 2d 558, (Fla 5th DCA 2000), rev. denied ____ So.2d _____, (Fla. Jun 21, 2001) (TABLE, NO. SC01-97)

BASIS FOR JURISDICTION

The Fifth District Court of Appeals in the State of Florida filed its opinion on October 13, 2000. (Appendix A). Petitioner timely filed a Motion for Rehearing which was denied and disposed of by the Fifth District Court of Appeals in the State of Florida on December 14, 2000. (Appendix B). Petitioner timely sought review of the October 13, 2000 opinion in the Supreme Court of Florida. The Supreme Court of Florida declined to accept jurisdiction on June 21, 2001. (Appendix C). The jurisdiction of this Court to review the above-mentioned decision by writ of certiorari is invoked under the provisions of 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fourteenth Amendment to the United States Constitution, Section 1, provides in pertinent part:

No state shall make or enforce any law which will abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

2. The Fifth Amendment to the United States Constitution, provides in pertinent part:

No person shall be ... deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE AND THE FACTS

On December 17, 1998, the Petitioner filed his Complaint in the Circuit Court for Orange County, Florida. In his Complaint, Petitioner alleges that he was the owner of property in Orange County constituting his sole residence and his homestead; that the property was improved with a dwelling house, an accessory building and other amenities necessary to a residential dwelling; that he stored and kept on the property numerous articles of personal property including, among other things, household furnishing, furniture, appliances, tools, agricultural equipment and fixtures of various types.

Appellant further alleges that on September 22, 1998, the Respondent's agents entered the property without his consent, destroyed and took his dwelling and his personal property; that he has been permanently deprived of all beneficial use of the dwelling and the personal property and temporarily deprived of all beneficial use of the land; and that the Respondent has not paid compensation for any of the said deprivations.

The Complaint contained two counts for relief. Petitioner alleges in Count I of the Complaint that the County's destruction of the dwelling and the personal property constituted a permanent taking of his property. In Count II he alleges a temporary taking of the land, as the County's actions temporarily destroyed all beneficial use of the land. Petitioner sought relief under the Fifth and Fourteenth Amendments to the Constitution of the United States for the permanent and temporary takings. Lastly, Appellant demanded a trial by jury.

On January 25, 1999, instead of filing an answer, the Respondent filed its Motion to Dismiss / Motion for Summary Judgment. In its motion, the Respondent asserted the affirmative defense(s) of police power and res judicata/collateral estoppel, relying on a prior ruling of the Orange County Building Code Board of Adjustment and Appeals (the "Board Ruling") [Appendix "E"] and a prior void

ruling of the Circuit Court in a prior proceeding by Petitioner to enjoin the demolition of his home (the "Injunction Ruling").[1]

Petitioner is inexperienced with appellate rules and procedure and was unrepresented by counsel during the administrative process. As a result, Petitioner did not appeal the Board Ruling because Petitioner was never provided any notice whatsoever regarding his right to appeal the Board Ruling. Petitioner was unaware of the overall consequences if he failed to appeal the Board Ruling within thirty (30) days via a Petition for Writ of Certiorari to the Circuit Court. Petitioner was never provided any notice of the procedures available to challenge the Board Ruling. When Petitioner sought an injunction to prevent the demolition, Respondent argued, and the Court accepted, that he has no right to an injunction because he did not appeal the Board Ruling and thus did not exhaust his administrative remedies. In any event, the record is clear that there was never any prior proceeding in any forum relating to the personal property, which included the well and septic tank.

In the instant case, the Lower Court ruled that Petitioner's cause of action for the taking of his dwelling and personal property is barred by res judicata and/or collateral estoppel based on the prior Board Ruling and void Injunction Ruling and thus, Petitioner's cause of action is frivolous. At the hearing on February 22, 1999, the Lower Court granted the Respondent's Motion for Summary Judgment and asked Respondent if it would be seeking attorneys' fees against Petitioner and the undersigned for filing a frivolous lawsuit.

On February 25, 1999, the Lower Court entered its Order and Final Judgment. [Appendix "D"]. Thereafter,

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[1] The Injunction Ruling is void because Petitioner served a Notice of Voluntary Dismissal prior to the injunction order being filed with the Clerk of the Court.

Petitioner filed his notice of appeal of the Lower Court's Order and Final Judgment.

The Fifth District Court of Appeal in and for the State of Florida, by its decision of October 13, 2000, affirmed the Lower Court's Order and Final Judgment. [Appendix "A"]. The District Court found that even if personal property that should not have been destroyed was destroyed, the Respondent's actions did not amount to a taking. The District Court affirmed the Lower Court's Order and Final Judgment. [Appendix "A"].

The Petitioner moved for rehearing, asserting, among other things, that the District Court's opinion is the first time any findings were made with respect to the personal property issue. Petitioner argued that the District Court erred in determining that the judicially unauthorized seizure and demolition of his personal property did not amount to a taking because the Florida Supreme Court has specifically held that personal property is protected under both the Florida Constitution and the Federal Constitution. The District Court denied the Motion for Rehearing. [Appendix "B"].

On January, 19, 2001, Petitioner sought discretionary review of the Fifth District Court of Appeals' opinion in the Supreme Court of Florida. Petitioner sought review in the Florida Supreme Court contending that personal property is protected under the State and Federal Constitutions. Petitioner claimed that it was error for the Fifth District Court of Appeals to fail to recognize the long standing principles concerning the doctrine of inverse condemnation and the protection afforded homes and personal property. The Supreme Court of Florida declined to accept jurisdiction on June 21, 2001. [Appendix "C"].

REASONS FOR GRANTING THE WRIT

I. THE FIFTH DISTRICT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This Court has not determined whether the Takings Clause of the Fifth Amendment requires just compensation be paid when a seizure and demolition of a home occurs without judicial authorization. Does a taking occur when a home and personal property are demolished and seized without judicial authorization? Is the Petitioner entitled to just compensation for the permanent taking of his home and personal property when the government's agents failed to seek judicial authorization of the seizure and demolition? Is the Petitioner entitled to just compensation for the permanent taking of his personal property if it is outside the scope of the demolition proceeding? These question have not been, but should be, resolved by this Court.

It is respectfully asserted that this Court should settle the issues surrounding the Takings Clause of the Fifth Amendment when a warrantless seizure and demolition of an individual's home and personal property occurs without prior judicial authorization. This Court should decide these issues in order to help define the boundaries of the police power of governmental agencies under the United States Constitution

The Takings Clause of the Fifth Amendment to the United States Constitution, which is made applicable to the States through the Fourteenth Amendment, provides that private property shall not be taken for public use without just compensation. *Dolan v. City of Tigard*, 512 U.S. 374, 383-384 (1994).

Not every destruction or injury to property by governmental action has been held to be a taking in the

constitutional sense. *Armstrong v. United States*, 364 U.S. 40, 48 (1960).

In *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908), the owner of allegedly decayed food was not entitled recover damages for the loss of his property. In *Miller v. Schoene*, 276 U.S. 272 (1928), the Court permitted state agents to enter property to destroy diseased trees without affecting a taking although the government's action had a permanent effect.

In *Hoeck v. City of Portland*, 57 F.3d 781 (1995), the Ninth Circuit concluded that the demolition of an abandoned commercial structure did not amount to a taking for which just compensation was due. However, the demolition in the case at hand involved the removal of Petitioner's home and personal property without judicial authorization. Does the police power provide governmental agencies, without prior judicial approval, the power to seize and demolish homes deemed unsafe considering the greater level of private versus public interests which are at stake?

As early as 1894, certain bounds and limitations of the state's police power were set. In *Lawton v. Steele*, 152 U.S. 133 (1894), the Court held that for an exercise of police power to be valid it must employ a reasonable means to a lawful end. Although the ability of state and local governments to solve state and local problems through the use of police power has expanded, federal Constitutional protections of private property have also increased.

Under the police power, the government may prevent an owner of property from using the property in such a manner as will threaten or inflict public harm. Police power includes the power to destroy offending property if such destruction is reasonably necessary to accomplish this purpose. When property is deemed to be a public nuisance, the police power provides public agencies the power to abate such public nuisances. However, the power to destroy the property depends

on the property actually being a nuisance. When property is destroyed that is not harmful in nature, the property owner is deprived of his property without just compensation.

The right to just compensation under the Takings Clause typically refers to property which has been taken for public purpose under the right of eminent domain. If property has been taken outside the scope of the proper limits of police power, as in the case at hand, just compensation should be paid.

An otherwise valid exercise of the police power constitutes a taking for which compensation is due if the owner suffers a permanent, physical occupation of the property. *Yee v. Escondido*, 503 U.S. 519 (1992). The process for evaluating a regulation's constitutionality involves an examination of the justice and fairness of the government action. *See, Andrus v. Allard*, 444 U.S. 51, 65 (1979).

A permanent physical occupation of private property by the state constitutes a taking for which a landowner must be compensated. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992) (takings clause requires compensation for "regulations that compel the property owner to suffer a physical 'invasion' of his property").

This Court has recognized situations wherein a taking can occur. One situation is where a regulation denies all economically beneficial productive use of a person's property. *See, Agins v. Tiburon*, 447 U.S. 255 (1980). Another situation is where a property owner suffers a permanent physical invasion of his property. *See, Lucas*, 505 U.S. at 1015. A physical invasion of private property can occur when the government interferes with a property owner's right to exclude. *See, e.g., Nollan v. California Coastal Com'n.*, 483 U.S. 825 (1987). In the instant case, the seizure and demolition of Petitioner's home and personal property constitutes a permanent, physical invasion of his property. The physical invasion of Petitioner's home through the government's warantless seizure and

demolition thereof interferes with the Petitioner's right to exclude.

When a permanent physical invasion of property occurs, the character of the governmental action itself becomes sufficient to effect a taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982).

Looking at the overall character of the government's action in the instant case, it can be concluded that the physical invasion of Petitioner's home without prior judicial authorization in the form of a warrant or Order of Court, sufficiently establishes that a taking has occurred. When Petitioner's home and everything that he owned was seized and demolished without judicial authorization, an unlawful taking occurred. The character of the Respondent's actions are sufficient to effect a taking in the case at hand.

Examining the justice, fairness and the character of the governmental action in the case at hand leads to the conclusion that a demolition and seizure of a home and personal property without judicial authorization violates many important Constitutional rights. *E.g.*, the right to be free of unreasonable searches and seizures (when one of the highest expectation of privacy exists), the right to adequate due process of law (when the ultimate property interest is at stake) and the right to just compensation for the taking of private property (when outside the scope of the state's police power).

Where the government seizes property not to preserve evidence of criminal wrongdoing but to assert ownership and control over the property, its actions must comply with the Fourth Amendment and also comply with the procedural protections of the Due Process Clauses of the Fifth and Fourteenth Amendments. *See*, *Soldal v. Cook County*, 506 U.S. 56 (1992); *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993).

In the instant case, Respondent failed to obtain a valid warrant authorizing the seizure of Petitioner's home and

personal property contrary to the Fourth Amendment to the United States Constitution. Respondent failed to seek an Order of Court authorizing the demolition and seizure of Petitioner's home and personal property. The five minute hearing held before the Building Codes Board of Adjustment and Appeals does not satisfy the requirements of due process of law. Clearly, the hearing before the BCBAA is not enough to satisfy the requirements of due process when the ultimate property interest is at stake - a person's home.

In *State Road Department of Florida v. Tharp*, 1 So.2d 868 (Fla. 1941) the late Justice Terrell could foresee the problems that might develop if administrative boards are authorized to destroy and seize private property when he stated the following:

> If a State agency can deliberately trespass on and destroy the property of the citizen in the manner shown to have been done here and then be relieved from making restitution on the plea of nonliability of the State for suit, then the constitutional guaranty of the right to own and dispose of property becomes nothing more than the tinkling of empty words. Such a holding would raise administrative boards above the law and clothe them with an air of megalomania that would eternally jeopardize the property rights of the citizens. It would reverse the order of democracy in this country and head it into a blind alley. American democracy is a distinct departure from the other democracies in that we place the emphasis on the individual and protect him in his personal property rights against the State and all other assailants.

The Building Codes Board of Adjustment and Appeals, as an administrative board, can not satisfy the due process and

warrant requirements of both the Florida Constitution and the United States Constitution.

This Court's precedents establish the general rule that Due Process requires that, absent an extraordinary situation, a party cannot invoke the power of the state to seize a person's property without a prior judicial determination that the seizure is justified. *United States v. $8,850*, 461 U.S. 555, 562 n.12 (1983) (citing *Boddie v. Connecticut*, 401 U.S. 371, 378-379 (1971). *See also, North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1974). *Cf. Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974).

This Court's precedents also establish the general rule that a warrantless search or seizure of property is unreasonable when there is a privacy interest at stake and there are no exigent circumstances present. *Camara v. Municipal Court*, 387 U.S. 523 (1967); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977); *Soldal v. Cook County*, 506 U.S. 56 (1992).

Considering the private interests at stake when dealing with the seizure and demolition of a home, no significant administrative burden would be imposed on governmental agencies to obtain some form of judicial authorization prior to seizing and demolishing a home. See, *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) [three due process factors to consider - the private interest affected by the official action; the risk of an erroneous deprivation of the interest under the procedures used; and, the governmental interest involved, including fiscal and administrative burdens].

In Florida, the Florida Supreme Court has held that the propriety of the government's action that resulted in the taking cannot be challenged in an inverse condemnation action. See, *Department of Agriculture and Consumer Services v. Polk*, 568 So.2d 35, 38 (Fla. 1990) ["the Department correctly notes that

the propriety of an agency's action may not be challenged in an inverse condemnation proceeding"].

This holding leads to an awkward result. If the justice, fairness and character of the government's action is looked at to determine the constitutionality of the government's action in an inverse condemnation claim, the propriety of the government's action must also be analyzed. In the case at hand, it is important to remember that Petitioner's home and property were seized and demolished without prior judicial approval in the form of a warrant or judicial order authorizing the seizure and demolition. There were no exigent circumstances present which would justify the seizure of Petitioner's home and personal property without judicial authorization. Thus, Petitioner respectfully asserts that the taking was not lawful. Petitioner's property has been unlawfully taken outside the bounds of the Respondent's police power. Should an unlawful taking of a home and personal property entitle the property owner to be paid just compensation under the Takings Clause of the Fifth Amendment to the United States Constitution? This narrow issue should be decided in order to help establish boundaries on the police power of governmental agencies.

The Fifth District Court of Appeals' decision below fails to recognize the long standing principles concerning the protection of homes and personal property. The police power does not carry with it the right to seize homes without judicial approval. As the Court explained in *Camara*, 387 U.S. at 526 (1967), quoting *Johnson v. United States*, 333 U.S. 10, 14:

> The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.

The justice, fairness and character of the government action in the case at hand leads to only one conclusion - that the actions of the Respondent's agents acting pursuant to the Standard Unsafe Building Abatement Code were unconstitutional. In the case at hand, Petitioner has lost his home and everything that he owns because five out of six members of an administrative board declared his house unsafe. In fact, the one board member who voted not to affirm the building official's decision is the only member who actually inspected the property. Petitioner was not represented by counsel during the administrative process and did not receive any notice that he could appeal the Board Ruling, much less when or how to appeal it. Yet, as soon as Petitioner sought an injunction, the Respondent argued that he has no right to seek injunctive relief because he failed to appeal the Board Ruling within thirty days.

When the ultimate property interest (a home) is at stake, justice and fairness should require that unrepresented individuals be provided actual notice that they have an opportunity to seek review of an administrative decision declaring their home unsafe. This is especially true when the Respondent failed to seek judicial authorization of its actions prior to seizing and demolishing the Petitioner's home and personal property.

It is Respondent's own failure to provide notice which would satisfy the requirements of due process of law by failing to provide notice of Petitioner's administrative / appellate remedies that caused Petitioner's failure to appeal the Board Ruling. Thus, this Court should not be bound by the administrative decision when Petitioner has been denied a fair opportunity to seek judicial review of that administrative decision.

The Fifth District's decision explicitly holds that the seizure and destruction of the Petitioner's property did not amount to a taking. [Appendix "A"]. The decision further

holds that, "The destruction of personal property in the course of demolition of a structure condemned as unsafe or a nuisance is not necessarily wrongful, much less a taking." [Appendix "A"].

This finding fails to consider the fact that a permanent and unauthorized invasion of a home has occurred. Petitioner has undoubtedly suffered a permanent physical invasion of his property. Courts have long recognized that personal property is protected under the Federal Constitution and that a taking occurs when there is a permanent deprivation of substantially all use of the property alleged to have been taken. Petitioner's items of personal property were seized without notice, without an opportunity to be heard, without a warrant and without judicial authorization. Yet, the Fifth District Court of Appeals found that just because his items of personal property were taken during the course of the demolition proceeding, this does not amount to a taking.

The Fifth District Court of Appeals' opinion ignores long standing precedent concerning the Constitutional protections afforded an individual's home and property. The Fifth District Court of Appeals was required to give the Takings Clause of the Fifth Amendment due recognition and effect. The Fifth District Court of Appeals failed to recognize the doctrine of inverse condemnation and the right to just compensation when government unlawfully seizes and takes an individual's property.

The general rule is that an individual has an action in inverse condemnation when real or personal property is taken by government without compensation. Both real and personal property are protected by the United States Constitution. The Florida Supreme Court characterized the protection afforded both real and personal property pursuant to the United States Constitution and the Florida Constitution in the case of *In re: Forfeiture of 1976 Kenworth Tractor Trailer Truck, Altered VIN 2433 40 M*, 576 So.2d 261 (Fla.1990), as follows:

> The United States Constitution expressly provides that private property shall not "be taken for public use without just compensation." U.S. Const. amend. V. Similarly, the Florida Constitution states that all natural persons have the right to acquire, possess and protect property, article I, section 2, Florida Constitution, and that no person may be deprived of property without due process of law. Art. I, § 9, Fla. Const. Article X, section 6(a) of the Florida Constitution further provides that "[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner...." This provision applies equally to real and personal property, including motor vehicles. See *Flatt v. City of Brooksville*, 368 So.2d 631 (Fla. 2d DCA 1979).

Both the United States Constitution and the Florida Constitution expressly provide for compensation to be paid to the owner whose property has been taken. Further, the Florida Constitution states that "no private property shall be taken except for a public purpose ...". As a result, what public purpose is served by making a man homeless? What public purpose is served by taking Petitioner's personal property which is clearly no threat to the public safety? Petitioner's personal property has been taken without just compensation, without any notice and without an opportunity for a hearing despite the provisions of both the United States Constitution and the Florida Constitution

Numerous cases in Florida support the position that an action in inverse condemnation is available when items of personal property are taken from the owner. See, *Broward County v. Rhodes*, 624 So.2d 319, 320 (Fla. 4th DCA 1993) [inverse condemnation applies to personal property.]; *South Florida Water Management District v. Basore of Florida, Inc.*,

723 So.2d 287 (Fla. 4th DCA 1998) [Further, although we recognize that personal property can be the subject of a taking ...]; *State, Dept.of Labor and Employment Sec. v. Lindquist*, 698 So.2d 299 (Fla. 2nd DCA 1997) [Appellees have alleged the deprivation of an interest in personal property. Such an interest is protected by article I, section 9, of the Florida Constitution. See generally *Department of Law Enforcement*, 588 So.2d 957 (discussing due process protection as applying to both real and personal property). Furthermore, appellees have sufficiently alleged lack of notice and an opportunity to be heard]. *Hillsborough County v. Gutierrez*, 433 So.2d 1337 (Fla. 2nd DCA 1983) [Florida law recognizes that items of personal property may be "taken" in a condemnation proceeding under our constitution even though no statute prescribes such a remedy].

In Florida, it is well settled that Petitioner has a viable cause of action in inverse condemnation for the taking of his personal property. As seen above, the District Court's opinion concluding that the Respondent's actions did not amount to a taking ignores other Florida Court's decisions.

In Florida, the destruction of private property is compensable even in situations where the government has destroyed the property in the valid exercise of its police powers. In *Department of Agricultural and Consumer Services v. Polk*, 568 So.2d 35, 39 (Fla. 1990), the Florida Supreme Court has recognized that "it is a settled proposition that a regulation or statute may meet the standards necessary for exercise of the police powers but still result in a taking."

In fact, it has been specifically held in Florida that where, as here, a property owner's building is destroyed by the government, he has a cause of action in inverse condemnation. *See, Kirkpatrick v. City of Jacksonville*, 312 So.2d 487 (Fla. 1st DCA 1975) citing *City of Jacksonville v. Schumann*, 167 So.2d 95 (Fla. 1st DCA 1964). It is well established in Florida that both real property and personal property are protected under the

Florida Constitution and the United States Constitution. The basis for these protections is to prevent arbitrary and unreasonable actions by the government.

In the instant case, a man has lost his home and every thing that he owned without prior judicial authorization. If government can seize and demolish a home without judicial authorization, then the Constitutional protections afforded an individual's home and property become worthless. The issues raised in the instant case are of great public importance because of the need to carefully balance governmental interests versus the privacy interests of the individual in his home. This balancing requires a careful review of the competing interests at stake. The government has an interest in protecting the public from nuisances which cause social harm. On the other hand, an individual has an interest in protecting and keeping his home and the items contained within it.

The private interest at stake in the case at hand is one of the most noted in our jurisprudence. The privacy interest associated with a home is perhaps the most recognized privacy interest there is. History reminds us that there is a greater level of protection afforded a home. In *Richardson v. State*, 787 So.2d 906 (Fla 2nd DCA 2001), the second District Court of Appeals reminded us that:

> Americans have long subscribed to the English common law principle that one's home is one's castle, so that not even the sovereign or its soldiers may enter without the owner's permission.
>
> Entering one's home without legal authority and neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial. It was condemned by the yearbooks of Edward IV, before the discovery of this country by Columbus.... William Pitt

> categorized a man's home as his castle. Paraphrasing one of his speeches in which he apostrophized the home, it was said in about this fashion: The poorest pioneer in his log cabin may bid defiance to the forces of the crown. It may be located so far in the backwoods that the sun rises this side of it; it may be unsteady; the roof may leak; the wind may blow through it; the cold may penetrate it and his dog may sleep beneath the front steps, but it is his castle that the king may not enter and his men dare not cross the threshold without his permission. This sentiment has molded our concept of the home as one's castle as well as the law to protect it..... The law so interpreted is nothing more than another expression of the moral emphasis placed on liberty and the sanctity of the home in a free country. Liberty without virtue is much like a spirited horse, apt to go berserk on slight provocation if not restrained by a severe bit. *Benefield v. State*, 160 So.2d 706, 709 (Fla.1964). If the constitutional protection of this liberty is to be more than mere words, it must be adhered to and strictly enforced; otherwise, the constitution will be only words and not "words that we live by."

The Fifth District Court of Appeals' opinion states, "The destruction of personal property in the course of demolition of a structure condemned as unsafe or a nuisance is not necessarily wrongful, much less a taking." [App. Tab-1]. The District Court overlooked the fact that Respondent failed to seek any type of judicial authorization for the abatement of any alleged nuisance. Even if the property was a nuisance, there should be a judicial determination to that effect. *See*, *Rowland v. State*, 176 So. 545, 546 (1937).

Respondent never sought a judicial determination prior to the destruction and seizure of Petitioner's home and property as an alleged nuisance. Because of this, the character of the government's action, acting outside the constitutional limits of its police power, amounts to an unlawful taking for which just compensation is due under the Fifth Amendment's Takings Clause.

In view of the importance attached to the rights of home owners, Petitioner respectfully submits that this Court should render a definite ruling upon the question of whether the right to just compensation under the Takings Clause of the Fifth Amendment is applicable to actions such as that in the case at bar. Such a ruling is greatly needed in light of the developing trend of state and local governments to conduct seizures and demolitions without judicial authorization.

In light of the increasing police powers of the state, and the lack of any ruling by this Court on the applicability of the Fifth Amendment's Takings Clause in such cases as the one at bar, it is respectfully submitted that this Court should exercise its discretion to review the decision of the Fifth District Court of Appeals in the instant case.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the opinion of the Fifth District Court of Appeals in the State of Florida.

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APPENDIX

APPENDIX A

District Court of Appeal of Florida,

Fifth District.

John J. LEWIS, Appellant,

v.

COUNTY OF ORANGE, Appellee.

No. 5D99-867.

Oct. 13, 2000

PER CURIAM.

Appellant appeals a summary final judgment denying him recovery on a theory of inverse condemnation after the appellee, Orange County ["County"], demolished structures determined to be unsafe on property owned by appellant. We find no error and affirm.

The sole issue that has detained us is whether summary judgment was properly entered on the portion of appellant's claim for personal property destroyed during demolition of the structures. The County's motion for summary judgment did not separately address the personal property claim, but rather asserted generally that its actions were lawful in light of the due process afforded appellant and prior rulings of the court denying appellant injunctive relief. Likewise, at the summary judgment hearing, appellant did not address the personalty claim separately. The destruction of personal property in the course of demolition of a structure condemned as unsafe or a nuisance is not necessarily wrongful, much less a taking. *See* §§ 823.05, Fla. Stat. (1997). The record in this case shows that one of the reasons for the unsafe abatement citation was the presence of "junk." When the County sought summary judgment, it was

necessary for appellant to come forward and show the court what personal property was outside the scope of the lawful demolition and why. According to the record, this issue had never been raised during the code enforcement process and the final order was not appealed. It was not raised in the injunction proceeding, nor was personal property removed in the face of the demolition notice. Even if personal property that should not have been destroyed was destroyed--a fact having no support in the record, the County's actions did not amount to a taking. *See Broward County v. Rhodes,* 624 So.2d 319 (Fla. 4th DCA 1993). It was not error to enter summary judgment.

AFFIRMED.

THOMPSON, C.J., W. SHARP, and GRIFFIN, JJ., concur.

APPENDIX B

In the District Court of Appeal of the State of Florida
Fifth District

JOHN J. LEWIS,
Appellant,

v. CASE NO. 5D99-867

COUNTY OF ORANGE,
Appellee.

_____/

DATE: December 14, 2000

ORDERED that Appellant's MOTION TO STRIKE RESPONSE, filed November 21, 2000, is denied. If is further

ORDERED that Appellant's MOTION FOR REHEARING AND REHEARING EN BANC, filed October 30, 2000, is denied.

I hereby certify that the foregoing is
(a teue copy of) the original Court order.

/s/_____
FRANK J. HABERSHAW, CLERK

cc: Johnie A. McLeod, Esq.
Kimberly A. Ashby, Esq.
Alan Lawson, Esq.

APPENDIX C

Supreme Court of Florida
THURSDAY, JUNE 21, 2001

CASE NO.: SC01-97
Lower Tribunal No.: 5D99-867

JOHN J. LEWIS vs. COUNTY OF ORANGE

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Respondent's Motion for Attorney's Fees is hereby denied.

SHAW, HARDING, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

A True Copy
Test:
/s/
Thomas D. Hall
Clerk, Supreme Court

bh
Served:

HON. FRANK J. HABERSHAW, CLERK
JOHNIE A. MCLEOD
ALAN LAWSON
KIMBERLY A. ASHBY
HON. LYDIA GARDNER, CLERK
HON. TED P. COLEMAN, JUDGE

APPENDIX D
IN THE CIRCUIT COURT, NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA
CASE NO. CI 98-10195
DIVISION: 40

JOHN J. LEWIS,

Plaintiff,

vs.

COUNTY OF ORANGE,

Defendant,

_____/

Order and Final Judgment

In this matter, Plaintiff John J. Lewis attempts to state a cause of action in inverse condemnation for Defendant County of Orange's (hereinafter "Orange County" or "the County") abatement and demolition of an unsafe structure on Plaintiff's property. It is undisputed that the County's Building Official notified Plaintiff on July 14, 1997, that the dwelling on his property at 402 W. Keene Road, Apopka, Florida was unsafe. The notice and order directed Plaintiff to either correct the safety deficiencies or demolish the structure. It is undisputed that the Building Official's findings were upheld by the Building Code Board of Adjustment and Appeals, following an evidentiary hearing requested by Plaintiff. Plaintiff did not appeal the Board's findings.

It is undisputed that Plaintiff then filed a civil action to enjoin demolition of the property. It is further undisputed that Circuit Judge Jeffords Miller held an evidentiary hearing and also found that the structure was "hazardous for human occupation." The Court entered its order denying Plaintiff's request for an injunction on August 20, 1998, in Case No. CI 98-6327. It is undisputed that Plaintiff failed to correct the deficiencies or demolish the structure. As a result, the County contracted to have the structure demolished. The demolition occurred on September 22, 1998.

As a matter of law, Plaintiff cannot relitigate the findings that the structure at issue was unsafe and hazardous for human occupation. *Dep't of Health and Rehabilitative Services v. B.J.M.*, 656 So.2d 906, 910 (Fla 1995) (Collateral estoppel ... prevents identical parties from relitigating the same issues that have already been decided [in a prior proceeding]."); *see also Thomson v. Dept. of Environmental Regulation*, 511 So.2d 989, 991 (Fla. 1987); *Miller v. Booth*, 702 So.2d 290, 291 (Fla. 3d DCA 1997).

The law governing this set of facts is clear. "The general rule is that a [local government] in the exercise of its police power may, without compensating the owner, destroy a building that threatens the public safety where, after reasonable notice and opportunity, the owner fails to remedy the dangerous condition." *Hoeck v. City of Portland*, 57 F.3d 781, 788 (9th Cir. 1995), *cert denied*, 516 U.S. 1112 (1996), quoting *Shaffer v. City of Winston*, 576 P.2d 823, 825 (Or. App. 1978). The Florida cases cited by Plaintiff also support the conclusion that Plaintiff has no valid basis for bringing an inverse condemnation action under these circumstances. Plaintiff cites to *Department of Agriculture and Consumer Services v. Polk*, 568 So.2d 35 (Fla. 1990) and *Kirkpatrick v. City of Jacksonville*, 312 So.2d 487 (Fla 1st DCA 1975) for the proposition that government destruction of property *that poses no threat to public safety* is compensable. In *Polk*, the Florida

Supreme Court explained that when a city, county or state agency destroys property because it poses a threat to public safety "it is clear that the constitutional requirement of 'just compensation' does not compel the State to reimburse the owner whose property is destroyed." *Polk*, 568 So.2d at 40 fn. 4 (quoting *State Plant Board v. Smith*, 110 So.2d 401, 406-407 (Fla. 1959)).

Therefore, based on the established findings that Plaintiff's property was unsafe and posed a safety hazard, it is clear as a matter of law that Plaintiff has no valid cause of action against the County for demolishing the unsafe structure.

For these reasons, it is hereby ORDERED and ADJUDGED that Defendant's motion for summary judgment is GRANTED. Plaintiff John J. Lewis takes nothing by this action and Defendant, Orange County, shall go hence without day.

The Court retains limited jurisdiction over this matter for the sole purpose of awarding costs and considering an award of attorneys' fees, upon motion by the County.

ORDERED in Chambers at the Orange County Courthouse, Orlando, Florida this 25th day of February, 1999.

/s/
Ted P. Coleman, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to C. Alan Lawso, Esq., Assistant County Attorney, 315 E. Robinson St., Suite 650, Orlando, FL 32801, and Johnie A. McLeod, Esq., Post Office Drawer 950, Apopka, FL 32704-0950, by U.S. Mail/hand delivery this __ day of _____, 1999.

Judicial Assistant/Attorney

APPENDIX E

Building Codes Board of Adjustment and Appeals
Orange County, Florida

JOHN J. LEWIS,

Appellant,

CASE NO. 96-08-03

vs.

CHRIST SANIDAS, as the BUILDING OFFICIAL of ORANGE COUNTY,

Appellee,

_____/

FINAL ORDER

THIS MATTER came to be heard before the Building Codes Board of Adjustment and Appeals ("BCBAA") on August 27, 1997 for consideration of the Appeal filed by JOHN J. LEWIS, the Appellant, from the Notice of Unsafe Building issued by CHRIST SANIDAS, as the BUILDING OFFICIAL of ORANGE COUNTY, the Appellee, on July 10, 1997, regarding a single family residence, pole barn, addition and wood building located at 402 W. Keene Road, Apopka, Florida 32703.

The Appellant made a presentation at the hearing.

The Appellee also made a presentation.

Upon consideration, it is ORDERED that the Notice of Unsafe Building is AFFIRMED.

Upon consideration, it is ORDERED that the Notice of Unsafe Building is AFFIRMED.

DONE AND ORDERED by the Building Code Board of Adjustment and Appeals effective the 27th day of August, 1997.

/s/
Joel Hammock, Chairman
Building Codes Board of
Adjustment and Appeals

Original to: Elizabeth Hayden, Recording Secretary, BCBAA

Copies to: John J. Lewis, Appellant, 402 W. Keene Road
Apopka, Florida 32703
Christ Sanidas, Building Official
John Warbington, Director, Building Department
Dan Mantzaris, Esquire, Counsel to BCBAA
Joel Prinsell, Assistant County Attorney